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NOTES

THE CHILD WELFARE SYSTEM AND ITS IMPLICATIONS ON THE BEST INTERESTS OF CHILDREN

*When the rain falls upon Elisa's face
the stars twinkle and the moon rises.
The world twirls in a heart-shaped form.
The river, open like Elisa's heart,
opened for love.*

*Elisa wants someone to love until the sun rises.
She wants someone to love so she can love them back.¹*

The state child welfare system in our country focuses heavily on parental interests when a problem arises within a family.² As a result, the best interest of the child³ often gets overlooked.⁴ In fact, there are far too

¹ *Child's Death Prompts New York Welfare Agency Inquiry* (All Things Considered radio broadcast, Dec. 6, 1995) [hereinafter *Child's Death*]. A poem taped to the door of the building where Elisa Izquierdo lived and died. *Id.* Elisa was a six year old girl who was physically abused, and finally murdered by her mother, Awilda Lopez. *Id.*

² Michael Quinn, 'Family Preservation' - *It Can Kill*, *NEWSDAY* (New York), Jan. 11, 1996, at A33 (explaining that "child welfare" is not truly the first priority of the Child Welfare Administration, rather "family preservation," often ironically at the expense of the child, is the focus of the system).

³ *Id.* Numerous jurisdictions define the "best interests of the child" differently. *See, e.g., Duhamel v. Duhamel*, 1997 WL 793039, at 2 (R.I. Dec. 5, 1997).

These factors include the wishes of the parents; the reasonable preference of the child -- if the court deems the child to be of sufficient intelligence, understanding, and experience to express such a preference; the child's interaction with parents and siblings; the child's adjustment to home, community, and school; the mental and physical health of everyone involved; the stability of the child's home environment; the moral fitness of the parents; and the willingness and the ability of each parent to facilitate a close relationship between the child and the other parent.

many examples of tragic deaths of abused children due to their being either placed back into the homes from which they were once removed or remaining in abusive homes despite reports made to authorities. This note will discuss the present state of the child welfare system. It will address the implications that the federal standard for proving abuse or neglect has on the New York Courts and its decisions regarding the removal of children from their homes. Further, it will discuss the inefficiencies of the New York Child Welfare System and, in particular, cite examples of the grave repercussions an inadequate system has on the children of the State. Finally, this note will propose some possible reforms for the New York Child Welfare System.

I. THE FEDERAL STANDARD AND ITS IMPLICATIONS ON THE NEW YORK STATE WELFARE SYSTEM

The current state of the child welfare system makes it difficult to terminate parental rights and, as such, children's rights and their safety are often overlooked.⁵ In *Santosky v. Kramer*,⁶ the United States Supreme Court required "clear and convincing evidence" to prove parental neglect or abuse.⁷ Before *Santosky*, New York law mandated only that the state prove by a "preponderance of the evidence" a permanent neglect finding

Id.; *Blair v. Blair*, 662 N.Y.S.2d 633, 634 (App. Div. 1997) (requiring inquiry into parent's fitness, past performance, stability, home environment, financial standing, and ability to guide child's emotional and intellectual development); *In re K.D.C.R.C.B.-T.*, 928 S.W.2d 905, 909 (Mo. Ct. App. 1996) (stating that in proceedings to terminate parental rights, ability of parent to provide child with a permanent home is key factor).

⁴ Quinn, *supra* note 2, at A33.

⁵ See generally David J. Herring, *Inclusion of the Reasonable Efforts Requirement in Termination of Parental Rights Statutes: Punishing the Child for the Failures of the State Child Welfare System*, 54 U. Pitt. L. Rev. 139 (1992) (noting that obstacles to finding permanent homes for children placed in temporary foster care exposes these children to substantial risk of harm).

⁶ 455 U.S. 745 (1982) (holding that a heightened standard of "clear and convincing" evidence must be established to terminate parental rights).

⁷ See *id.* at 748.

against a parent.⁸ The Court ruled that this standard violated the Due Process Clause of the Fourteenth Amendment.⁹ It held that parents' fundamental liberty interests to rear their children, as well as their privacy interests, require a higher standard of proof to show abuse or neglect, than a mere preponderance of the evidence.¹⁰ Additionally, the Court implemented a balancing test, enunciated in *Matthews v. Eldridge*,¹¹ to determine exactly what standard of proof parental termination did require.¹² This test balances three factors: (1) The private interest effects on the parties of the proceeding; (2) the State's chosen standard of proof and its possible risks of error; and (3) the countervailing governmental interest supporting the challenged procedure.¹³ In accordance with this test, the *Santosky* Court determined that a stricter standard of proof was necessary for parental termination proceedings.¹⁴ The Court's reasoning emphasized that the high stakes the parents face at a fact-finding proceeding, coupled with the irreversible consequences that may result from an error, require a "clear and convincing evidence" standard of proof

⁸ *Id.* at 747. The New York Family Court Act required only a "fair preponderance of the evidence" standard prior to the *Santosky* case. N.Y. FAM. CT. ACT § 622 (McKinney 1975 & Supp. 1981-82). However, the Court in *Santosky* held that a low standard of proof violated the Due Process Clause of the Fourteenth Amendment, and thus was unconstitutional. *Santosky*, 455 U.S. at 768.

⁹ *Id.* at 747 (upholding a "clear and convincing" standard of proof as consistent with section one of the Fourteenth Amendment).

¹⁰ *Id.* at 749. Thirty-five other states require a higher standard of proof than New York's mere preponderance of the evidence standard. *Id.* Because termination of parental rights completely denies natural parents any custodial rights or authority over their children's upbringing, the Court believes that these parents should be afforded certain procedural safeguards. *Id.* Thus, the Supreme Court held that a heightened standard of evidence to prove permanent neglect will provide the parents with the necessary safeguards and uphold their due process rights. *Id.*; see also *Goldberg v. Kelley*, 397 U.S. 254, 262-63 (1970) (holding that "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'").

¹¹ 424 U.S. 319 (1976).

¹² *Id.* at 335.

¹³ *Id.*

¹⁴ See *Santosky*, 455 U.S. at 754.

to comply with the Due Process Clause of the Fourteenth Amendment.¹⁵

This *Santosky* standard makes it difficult for state courts to act in a manner they believe would be most beneficial to the welfare of a child.¹⁶ The legal system in our country requires that all tribunals follow United States Supreme Court precedent, or risk having their decisions reversed on appeal.¹⁷ Unfortunately, this places the state courts in a troublesome position. Traditionally, family issues have resided within state law rather than federal law.¹⁸ However, the federal standard requiring "clear and convincing evidence" in order to terminate parental rights, takes away the states' autonomy to decide issues at their discretion.¹⁹ For example, if a state court judge felt that terminating parental rights would serve a child's best interest, but the agency arguing in court only proved by a preponderance of the evidence that the child was neglected or abused, federal law would, nonetheless, prohibit a judge from removing this child from the abusive parents.²⁰

This federal standard is detrimental to children residing in New York because the New York statutes already heavily emphasize parental

¹⁵ *Id.* at 753.

¹⁶ *Id.* at 770-71 (Rehnquist, J., dissenting) (stating that domestic relations issues have been left to the states to decide, free from federal intrusion, and able to experiment with different remedies that could possibly lead to progress in the child welfare system).

¹⁷ U.S. CONST. art. III, § 2. This section of the Constitution gives the United States Supreme Court the power to determine whether a state court has reached a decision not in conformity with the United States Constitution. *Id.* In *Santosky*, the Supreme Court determined that the preponderance of the evidence standard violated the due process rights of the petitioners. See *Santosky v. Kramer*, 455 U.S. 745, 747 (1982). Thus, the Supreme Court was authorized to review the New York Court of Appeals decision because there was a federal question at issue, and not just a reviewal of a state court decision. *Id.* See also *Martin v. Hunter's Lessee*, 1 Wheat. 304 (1816) (holding that the United States Supreme Court is authorized to review the constitutionality of a decision by a state's highest court).

¹⁸ U.S. CONST. amend. X (explaining the states general interest in policing the actions of its citizens).

¹⁹ See *Santosky*, 455 U.S. at 747-48.

²⁰ See *id.* at 748-49.

rights with the goal of keeping the family in tact.²¹ Although the New York legislature recognizes that a child's best interests are indeed important,²² nonetheless, the statutes require the state agencies to make "diligent efforts" to keep the family unit together.²³ Unfortunately, however, these "diligent efforts" place too much emphasis on parental rights and the family unit, which often leads to tragic results for children who are being either abused or neglected.²⁴ For example, from 1990 until 1993, 172 children, whom the New York Children's Welfare Agency was tracking due to reported abuse, died as a result of abuse.²⁵ This statistic is unnecessary and avoidable; however, the state courts are in a position

²¹ N.Y. SOC. SERV. LAW § 384 (b)(1)(iii) (McKinney Supp. 1981-82) (stating that "the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home.").

²² N.Y. SOC. SERV. LAW § 384 (b)(1)(ii) (McKinney Supp. 1981-82) (stating that "it is generally desirable for the child to remain with or be returned to the natural parent because the child's need for a normal family life will usually best be met in the natural home, and that parents are entitled to bring up their own children unless the *best interests* of the child would be thereby endangered.") (emphasis added).

²³ N.Y. SOC. SERV. LAW § 384 (b)(7)(f) (McKinney Supp. 1981-82). This statute defines "diligent efforts" as:

reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child, including but not limited to: (1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family; (2) making suitable arrangements for the parents to visit the child except that with respect to an incarcerated parent, arrangements for the incarcerated parent to visit the child outside the correctional facility shall not be required unless reasonably feasible and in the best interest of the child; (3) provision of services and other assistance to the parents, except incarcerated parents, so that problems preventing the discharge of the child from care may be resolved or ameliorated; (4) informing the parents at appropriate intervals of the child's progress, development and health.

Id.

²⁴ See *infra* notes 50 & 59 and accompanying text.

²⁵ Jerry Harris, *Postmortem: After Elisa. CWA Shifts Gears Following Another Abused Child's Death*, VILLAGE VOICE (New York), Dec. 12, 1995, at 14.

that places difficulty on their attempts to rectify the current situation.²⁶ The imposed federal standard of proving "clear and convincing" evidence greatly heightens the prosecution's burden of proving abuse or neglect.²⁷ The United States Supreme Court holds that this elevated standard of proving parental unfitness is imperative to prevent the erroneous termination of a natural child and parent relationship.²⁸ While maintaining a strict standard of proof to show parental unfitness is an important objective of the courts,²⁹ the controversy arises over whether this objective is so important as to tolerate the perpetuation of physical or mental abuse to an already allegedly abused or neglected child.³⁰

²⁶ See *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) (regarding state intervention of domestic relations, "substantial weight must be given to the good-faith judgments of the individuals [administering the program] . . . that the procedures they have provided assure fair consideration of the . . . claims of individuals."); see also *Santosky*, 455 U.S. at 771-72 (Rehnquist, J., dissenting) (exhibiting that New York's good-faith effort to implement a system by which the state considers both the parental interests and the child interests cannot be attained in accordance to the federal elevated standard of "clear and convincing" evidence, and New York's balancing of both interests advocated a system by which the prosecution only had to prove parental unfitness by a preponderance of the evidence at the fact-finding hearing).

²⁷ See *Santosky*, 455 U.S. at 749-50.

²⁸ *Id.* at 760-61.

²⁹ *Id.* at 760.

³⁰ Interview with Judge Susan Ricci Cohen, Massachusetts Family Court Justice, in Wellesley, M.A. (Oct. 19, 1996) [hereinafter Interview]. Judge Cohen commented that state family court judge's are constantly battling with the imposition of the federal standard of "clear and convincing" evidence on the state family courts. *Id.* Traditionally, domestic relations have always been left to the state judges and their discretion, however, in *Santosky*, the United States Supreme Court crucially undermined this discretion. *Id.* Judge Cohen explained that the elevated federal standard places judges in a position where they would like to act in a way which would balance the interests of both the parent and the child, however, they are held back because there is this standard that is lurking above and must be complied with. *Id.* Judge Cohen says that often times she will have to rule in favor of a parent over the best interest of a child, even though she disagrees with her ruling. *Id.* She is bound by precedent, and thus, if she chooses to rule by her own discretion, she runs the very probable risk of being overturned by a higher court. *Id.* Judge Cohen adds that this is a very dangerous risk to take. Not because her holding may be reversed, but because when one is dealing with children, it is not prudent to prolong litigation and have a child become attached to a foster parent or another family, and then be taken away and returned to the natural parent. *Id.* Thus, with the advent of "clear and convincing" evidence as the required standard of proof in order to

The federal standard of "clear and convincing" evidence, as well as New York's "diligent efforts" requirement, favors parental rights at the expense of the best interest of the children.³¹ For instance, according to the current standards of termination of parental rights, if the court errs at a fact-finding proceeding, this error may perpetuate a child remaining in an abusive home.³² The consequence of this error could be that a child would endure ongoing abuse or even worse, death.³³ Whereas, if the court errs by removing a child from his natural parents who were not abusing their child, at least the decision could be reversed.³⁴ There would certainly be many repercussions and traumas involved if such a circumstance occurred,³⁵ but the parents would always have the right to establish that the

terminate parental rights, many controversies have arisen with respect to the state family court systems. *Id.*

³¹ *Id.*

³² *Addington v. Texas*, 441 U.S. 418, 427 (1979). The Court stated that, "[t]he individual should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state." *Id.* The Court held that the amount of due process an individual should receive is directly linked to the risk involved in the proceeding. *Id.* The *Santosky* Court adopts this reasoning, but it only considers the parents' due process rights versus the state's due process rights. *Santosky v. Kramer*, 455 U.S. 745. It does not, however, consider the children's rights and the possible implications that a heightened standard of evidence may have on their best interests. *Santosky*, 455 U.S. at 768.

³³ Bruce Boyer, *Ethical Issues In the Representation of Parents in Child Welfare Cases*, 64 *FORDHAM L. REV.* 1621 (1996) (recounting an incident of a Chicago mother, Emily Hernandez, who hanged her three-year-old son to death just months after a judgment allowing her to continue seeking help through child welfare agencies); see also Robin A. Rosencrantz, *Rejecting 'Hear No Evil Speak No Evil': Expanding The Attorney's Role in Child Abuse Reporting*, 8 *GEO. J. LEGAL ETHICS* 327, 331 (1995) (listing a myriad of consequences suffered by abused children, including sexual dysfunctions, depression, speech problems, and difficulties in relationships).

³⁴ N.Y. FAM. CT. ACT § 1061 (McKinney 1983) (stating that parents may petition the Family Court to vacate or set aside an earlier decision on narrow grounds, such as newly discovered evidence or fraud).

³⁵ *Santosky*, 455 U.S. at 765-66. "For the child, the likely consequence of an erroneous failure to terminate is preservation of an uneasy status quo. For the natural parents, however, the consequences of an erroneous termination is the unnecessary destruction of their natural family." *Id.* But see N.Y. FAM. CT. ACT § 1061 (McKinney 1983) (discussing the importance of the court's power to vacate and modify orders that had not been in the best

court ruled incorrectly at the fact-finding hearing.³⁶ So, when balancing the parents' interests, embodying the stricter standard of review, with the children's interest, favoring the lower, preponderance of the evidence standard, a court should risk erring in favor of protecting a child from suffering irreparable harm or death.³⁷ Instead, the cumbersome burden of the federal law, coupled with New York's laws, proves the opposite.³⁸ These laws make it extremely difficult to terminate parental rights, which unfortunately, is often at the expense of the children.³⁹

II. THE TRAGIC RESULTS OF AN INEFFICIENT SYSTEM

Since 1876, New York State has recognized the necessity of protecting children from abuse and neglect.⁴⁰ For example, the New York legislature created a penal statute, which provided that a state must

interests of children).

³⁶ See N.Y. FAM. CT. ACT § 1061 (McKinney 1983).

³⁷ But see *Santosky*, 455 U.S. at 765. The Court clearly maintains that the controversy regarding erroneous termination of parental rights cannot be fairly balanced with a child's best interest if a preponderance of evidence standard is applied. *Id.* Thus, the Court holds that the moderate evidential standard is unconstitutional, without addressing the best interest of the child. *Id.*

³⁸ *Santosky*, 455 U.S. at 764 (holding that "[a]n elevated standard of proof in a parental rights termination proceeding would alleviate 'the possible risk that a factfinder might decide to [deprive] an individual based solely on a few isolated instances of unusual conduct [or] . . . idiosyncratic behavior.'")

³⁹ *Id.*; see also Jill Sheldon, *50,000 Children Are Waiting: Permanency, Planning and Termination of Parental Rights Under The Adoption Assistance and Child Welfare Act of 1980*, 17 B.C. THIRD WORLD L.J. 73, 85 (1997) (describing New York citizens' outrage over the protection given to a mother, Awilda Lopez, who had brutally killed her six-year-old child in 1995). In response to this incident, New York City Mayor Rudolph Guiliani shifted the state's focus from the family to the child. *Id.*

⁴⁰ N.Y. PENAL LAW § 260.10 (requiring that a parent willfully injure a child). See also *People v. Scully*, 134 Misc.2d 906, 908 (Sup. Ct. 1987). New York City's Criminal Court held that the defendant father endangered his daughter's welfare by not removing her from the home of her abusive mother. *Id.* at 909; *Farias v. New York*, 101 Misc.2d 598, 601 (Sup. Ct. 1979) (stating that the impermissible abuses in the 1876 statute were misdemeanors).

protect "the life or limb" of a child and a state must "prevent [the child's] health [from being] injured or [the child's] morals [from becoming] depraved."⁴¹ Since this lawful recognition, New York has established more productive child welfare laws and agencies.⁴² New York added its family court branch to the State's jurisprudence in 1962.⁴³ Soon thereafter, in the wake of the extensive publicity surrounding the brutal death of Roxanne Felumero,⁴⁴ New York enacted The Child Abuse Provisions of Article Ten of the Family Court Act.⁴⁵

⁴¹ N.Y. PENAL LAW § 260.10.

⁴² *People v. Comm'r of Welfare of New York*, 188 Misc. 919, 919-23 (Sup. Ct. 1947) (allowing adoptive parents to gain custody of children who are abused under the provisions of the Domestic Relations Law § 112); see also *In re Greer v. Bane*, 158 Misc.2d 486, 492 (Sup. Ct. 1993) (discussing the court's discretion in placing children in foster care provided under Social Services Law § 384-a); *In re Crowley v. Bressler*, 181 Misc. 59 (Sup. Ct. 1943) (summarizing the purposes of the Social Welfare Law § 397, including providing relief for delinquent and destitute children).

⁴³ Martin G. Karopkin, *Child Abuse and Neglect: New Role for Criminal Court*, N.Y.L.J., Feb. 28, 1996, at 1 (explaining that with the state's progressive realization of the need for recognizing child abuse and neglect problems, it has developed a special branch in the court system which would address the family and children with care, and an aim to rehabilitate and ameliorate the troubled situations).

⁴⁴ Roxanne Felumero was murdered in 1969. See John Doris et al., *Training in Child Protective Services: A Commentary on the Amicus Brief of Bruck and Ceci (1993/1995)*, 1 PSYCHOL. PUB. POL'Y & L. 479, 483-84 (1995).

⁴⁵ N.Y. FAM. CT. ACT § 1046 (McKinney 1983). This statute pertains to the admissible evidence in a child protective proceeding. *Id.* Sub-section (a) provides, in part:

(i) proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of, or the legal responsibility of, the respondent; and (ii) proof of injuries sustained by a child or of the condition of a child of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the care of such child shall be prima facie evidence of child abuse or neglect, as the case may be, of the parent or other person legally responsible; and (iii) proof that a person repeatedly misuses drugs or alcoholic beverages, to the extent that it has or would ordinarily have the effect of producing in the user thereof a substantial state of stupor, unconsciousness, intoxication, hallucination, disorientation, or incompetence, or a substantial impairment of judgment, or a substantial manifestation of irrationality, shall be prima facie evidence that a child of

New York continues to make attempts at revising and implementing new laws aimed at the protection of children;⁴⁶ however, the current state of the New York Child Welfare System has not yet reached an acceptable level of protection.⁴⁷ In 1994, seventy-eight children died from abuse in New York City.⁴⁸ The Child Welfare Agency was already familiar with twenty-five of the seventy-eight victimized children.⁴⁹ Thus, the authorities knew that approximately one out of three murdered children were abused or neglected. The implicit questions drawing from this example are: How come these abused or neglected children remained in an abusive home,⁵⁰ and what can be done to prevent the occurrence of such tragedies in the future?⁵¹

Questions such as the one above, have consistently reappeared in the media regarding the Child Welfare Administration.⁵² Every time the

or who is the legal responsibility of such person is a neglected child except that such drug or alcoholic beverage misuse shall not be prima facie evidence of neglect when such person is voluntarily and regularly participating in a recognized rehabilitative program[.]

Id.

⁴⁶ David J. Lansner, *Recent Legislation in Child Welfare 1988-1994*, 171 PLI/CRIM 367, 371 (1995) (discussing New York's adoption of the Family Policy which addresses the need for early family intervention).

⁴⁷ Barry Bendetowies, *Felony Murder and Child Abuse: A Proposal For the New York Legislature*, 18 FORDHAM URB. L. J. 383, 386-87 (1990/1991) (suggesting that New York, like other jurisdictions, should separate child abuse into different levels of felonies and misdemeanors, rather than encompassing all child abuse acts under class A misdemeanors).

⁴⁸ Richard Goldstein, *Monster Mom*, VILLAGE VOICE (New York), Dec. 19, 1995, at 21 [hereinafter Goldstein, *Monster Mom*].

⁴⁹ Kimberly McLarin, *Deaths of Children in Troubled Families at a Low*, Panel Reports, N.Y. TIMES, Aug. 9, 1995, at 2.

⁵⁰ Goldstein, *Monster Mom*, *supra* note 48, at 21 (asking "Why this shameful death?" when referring to the tragic death of six-year-old Elisa Izquierdo).

⁵¹ Edward A. Adams, *Certain Child Confidentiality Laws Urged Repealed*, N.Y.L.J., July 18, 1991, at 1 (discussing the repeal of Social Services Law § 422 (4)(a) which had prevented New York agencies from sharing information about incidents of child abuse). It is suggested that the law endangered children's lives unintentionally and prevented citizens from holding agencies accountable for decisions. *Id.*

⁵² Goldstein, *Monster Mom*, *supra* note 48, at 21 (discussing CWA's decision to cut its abuse prevention budget by "[twenty-five] percent since 1993" as a focus of the news).

press gets access to information on another child murdered from abuse, the public is outraged and lobbies to reform the current state of our child welfare laws.⁵³ For example, two prominent, yet tragic, instances of children dying at the hands of their abusive parents, have helped to reshape New York's confidentiality laws surrounding child abuse.⁵⁴

The first example regards a young boy named Yaakov Riegler.⁵⁵ In 1990, his mother, Shulamis Riegler, murdered him.⁵⁶ Ms. Riegler "twisted his leg until it broke and slammed his head against a wall," causing his death.⁵⁷ Some years earlier, Ms. Riegler had beaten Yaakov's older brother "into a coma."⁵⁸ In 1986, after Ms. Riegler had abused her older son and plead guilty to the charges, she was placed on probation and admitted into a psychiatric rehabilitative program for her abusive

⁵³ *Id.*

⁵⁴ Adams, *supra* note 51, at 1. The Legislature proposed 5 new bills that would alleviate some of the stringent requirements imposed by the confidentiality laws of (New York Social Services Law § 422). The proposed bills that were lobbied for allowed:

- Probation departments the same access to confidential information that other law enforcement agencies already have, and allow them to share information with child protective services.
- State and local officials access to records so they can audit child protective agencies.
- Agencies charged with child protection to issue reports when an abused child dies that detail the involvement of the agencies with the family, with the proviso that the identities of the children and their families remain confidential.
- Child protective services to release some confidential information when reports of child abuse become public, such as when a child dies.
- The Department of State Ombudsman access to confidential records to investigate citizen complaints about child protective services.

Id.

⁵⁵ Adams, *supra* note 51, at 1 (stating that Yaakov was eight years old when he died in October 1990).

⁵⁶ *Id.* (noting that Yaakov's mother was released from probation despite "reports that she continued to abuse her children").

⁵⁷ *Id.*

⁵⁸ Ms. Riegler, like Awilda Lopez, was forgiven by the system after this incident.

Id.

tendencies toward her children.⁵⁹ Once Ms. Riegler completed the program and her probation period, the Child Welfare System returned both Yaakov and his brother to her.⁶⁰ The System enabled the return, despite her previous behavior and with current reports of continued abuse.⁶¹ Soon thereafter, Ms. Riegler murdered her son, Yaakov.⁶²

Elisa Izquierdo's murder is another example of a preventable death.⁶³ Again, there was extreme public outcry and lobbying for reform of the Child Welfare System, after her murder.⁶⁴ Six year old, Elisa, was found dead in her home on November 22, 1995.⁶⁵ The medical-examiner determined her death as murder, resulting from a blow to the head.⁶⁶ Additionally, the examiner discovered that Elisa had cigarette burns, bruises all over her body, and broken fingers.⁶⁷ Evidence showed that Elisa was both physically and sexually abused for some time.⁶⁸ Elisa's mother, Awilda Lopez, a former drug-addict, was charged with Elisa's murder.⁶⁹ She was also charged with manslaughter and the endangerment of the welfare of a minor.⁷⁰

The background facts surrounding Elisa's story, make her death, as well as the New York Child Welfare System, seem even more catastrophic.⁷¹ Awilda Lopez gave birth to Elisa while addicted to crack.⁷²

⁵⁹ Adams, *supra* note 51, at 1.

⁶⁰ *Id.*

⁶¹ See *supra* note 56 and accompanying text.

⁶² Adams, *supra* note 51, at 1

⁶³ See Daniel Wise, *Hearing on Neglect Closed to Reporters, Appeal Seen Probable in Izquierdo Matter*, N.Y. L. J., Apr. 24, 1996, at 1 (discussing Elisa Izquierdo's death).

⁶⁴ *Id.*

⁶⁵ Richard Pyle, *Pataki Oks 'Elisa's Law'*, TIMES UNION (Albany, N.Y.), Feb. 13, 1996, at B2.

⁶⁶ *Child's Death*, *supra* note 1.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* (stating that if convicted, she faces a prison sentence of 25 years to life).

⁷¹ Wise, *supra* note 63, at 1 (noting that Elisa Izquierdo's fatal beating resulted in an overhaul of the city's child protection system).

Subsequently, Elisa lived with her father, Gustavo Izquierdo.⁷³ Around age two and a half, Elisa began visiting with her mother.⁷⁴ Elisa's teachers observed that on at least two occasions, Elisa returned to school after her visits behaving withdrawn.⁷⁵ She complained that she did not want to visit her mother anymore.⁷⁶ The teachers also observed bruises on Elisa's body.⁷⁷ There were at least two calls made to the child abuse hot-lines reporting the observations of Elisa's teachers.⁷⁸ Nothing was done.⁷⁹

In July of 1994, Elisa's father died,⁸⁰ and Brooklyn Family Court Judge, Phoebe K. Greenbaum, awarded Awilda Lopez, Elisa's mother, full custody of Elisa in September of the same year.⁸¹ The Judge received many letters from school officials that informed her honor of their past observations of Elisa's abuse; nonetheless, she still awarded Awilda Lopez custody.⁸² The Judge was not able to use these letters against Awilda Lopez when adjudicating for permanent custody, because the letters were inadmissible under the evidentiary hearsay rules.⁸³ Furthermore, Elisa's cousin, Elsa Canizares, who originally contested Awilda's application for

⁷² *Child's Death*, *supra* note 1.

⁷³ *Id.*

⁷⁴ *Id.* (stating that her mother had supposedly "kicked her angry habit").

⁷⁵ *Id.* (explaining that she seemed "extremely distressed, not her usual self").

⁷⁶ *Id.*

⁷⁷ *Child's Death*, *supra* note 1.

⁷⁸ *Id.* (noting that "since 1988, teachers . . . have been required by law to report such signs of abuse and, in fact, can be sent to prison should they fail to do so.").

⁷⁹ *Id.* Donna Seravalo, Exec. Dir., Montessori School, stated that "[her] attempts to follow up on her reports to the hot line seem[ed] to lead no where." *Id.*

⁸⁰ *Id.* (stating that Gustavo Izquierdo died of cancer).

⁸¹ Matthew Goldstein, *Few Options Open to Judge in Abuse Case; Cousin Seeking Custody Said Not to Have Appeared*, N.Y.L.J., Nov. 28, 1996, at 1 [hereinafter Goldstein, *Few Options*] (stating that "[Judge] Greenbaum may have had few legal options.").

⁸² *Id.* (discussing that Elisa's cousin who was challenging the mother's custody failed to show up at the court hearing which left the judge no choice but to award the mother custody).

⁸³ *Id.* A family lawyer commented that even though the letters were inadmissible, the Judge could have put off rendering a decision on who would receive permanent custody and ordered another investigation by child welfare officials to determine and monitor Elisa's situation at the time. *Id.*

custody of Elisa, did not show up to court on the day the judge was deciding who would receive permanent custody.⁸⁴ There was no compelling reason to bar Awilda Lopez's request for permanent custody of her daughter argued in front of the Court, so the judge decided her only choice was to award Awilda Lopez full custody of Elisa.⁸⁵ This decision was fatal for Elisa because ultimately, Awilda Lopez took her daughter home and proceeded to beat her to death.⁸⁶

III. ELISA'S LAW: THE STATE'S REFORMATION OF THE CONFIDENTIALITY LAWS REQUIRING GOVERNMENTAL AGENCIES TO KEEP CHILD ABUSE CASES SECRET

After Elisa Izquierdo's death, the public was outraged that an abusive parent murdered her child when school, governmental, and judicial officials, were all well aware of the ongoing abuse.⁸⁷ Again, the questions posed were why did our Child Welfare System allow such a tragedy to occur, and how are we going to prevent the reoccurrence of this same situation?⁸⁸

The New York Child Welfare System, at the time of Elisa's death, acted so that "a veil of confidentiality" surrounded a report of child abuse made to the statewide central register of child abuse and maltreatment.⁸⁹

⁸⁴ *Id.*

⁸⁵ *Id.* (explaining that Judge Greenbaum based her decision on the recommendation of the city's child welfare administrator and Elisa's court appointed legal guardian from the Legal Aid Society).

⁸⁶ Goldstein, *Few Options*, *supra* note 81, at 1.

⁸⁷ *Id.* (evidencing the judiciary's knowledge of the situation); *see also Child's Death*, *supra* note 1 (evidencing school officials' knowledge of the abuse); Goldstein, *Monster Mom*, *supra* note 48, at 21 (evidencing child welfare authorities and government officials knowledge of the abuse).

⁸⁸ Goldstein, *Monster Mom*, *supra* note 48, at 21.

⁸⁹ N.Y. SOC. SERV. LAW § 422 (1)(a) (McKinney 1992). This statute, before its 1996 amendment of what is now called "Elisa's Law", provided that reports made to the statewide central register of child abuse and maltreatment should be kept confidential. *Id.* There are exceptions to this confidentiality requirement for people such as doctors, school teachers, agency

McKinney's New York Social Services Law, section 422, allowed for the prevention of disclosure of a reported case of child abuse.⁹⁰ The originally enacted law protected the anonymity of the people reported for inflicting the child abuse.⁹¹ Furthermore, the statute was intended to protect the individuals who were reporting the abuses.⁹² Without a guarantee of personal confidentiality in reporting abuses, authorities worried that the reports would not be made at all.⁹³ Additionally, the legislature designed the law with the goal of protecting individuals accused of such abuse from public retribution.⁹⁴ For example, the previously amended statute expunged the records not containing substantiated proof or credible evidence of the alleged abuse or maltreatment from the central register and from any local child protective services or the state agency which investigated the report.⁹⁵ The person reported could request to have the report expunged from public record, no later than ninety days after it was made.⁹⁶ Thus, the alleged abuser received protection from society by the non-disclosure requirement of the statute and the ability to have his or her records expunged.⁹⁷ The pre-amended statute's provisions had two major implications on the child welfare system.⁹⁸ The first, and most detrimental to the best interest of the child, was the stringent guidelines on the disclosure of information regarding the previous abuse of a child.⁹⁹ This requirement made repeat abuse of a child or abuse of a sibling, extremely difficult to prevent in the future.¹⁰⁰ The law was set up such that the

workers, if they have reasonable belief during their encounter a child is being subjected to ongoing abuse. *Id.*

⁹⁰ *Id.*

⁹¹ N.Y. SOC. SERV. LAW § 422 (4)(a) (McKinney 1992).

⁹² Adams, *supra* note 51, at 1.

⁹³ *Child's Death*, *supra* note 1.

⁹⁴ *Id.*

⁹⁵ N.Y. SOC. SERV. LAW § 422-5 (McKinney 1992).

⁹⁶ N.Y. SOC. SERV. LAW § 422-8(a) (McKinney 1992).

⁹⁷ N.Y. SOC. SERV. LAW § 422 (McKinney 1992) (notes and decisions).

⁹⁸ Adams, *supra* note 51, at 1.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

government agencies assigned to oversee the families under investigation and supervise them with their problems, were virtually estopped from revealing any of their findings.¹⁰¹ Their entire investigation and counseling were kept secret.¹⁰² Such secrecy completely inhibited communication between the entities in which such communication was vital.¹⁰³ Police departments, schools, day care centers, child welfare agencies, case-workers, etc. could not, by law, reveal their findings with one another because of the "veil of confidentiality" requirement.¹⁰⁴ By not allowing these entities to share their information, the situations of the abused children perpetuated.¹⁰⁵ If, for example, the police told a school authority that one of their students may have been abused in the past, or that an agency had reason to believe the alleged abuse could be on-going, it is likely that the simple sharing of this information could prevent abuse in the future. Teachers could keep a closer watch on anything that seemed out of the ordinary, if informed of any such allegations. On the other hand, if teachers were not privy to such knowledge, they may possibly overlook the suspected abuse if it was to reoccur. Moreover, they may detect the abuse and make a separate report, but without the inter-communication of all of the different entities, the revelation of a single report would not be sufficient to show the severity of the situation. It would be virtually impossible to uncover repeated patterns of abuse which would help to implicate the abuser.

A similar situation occurred with Elisa Izquierdo.¹⁰⁶ Before Elisa's death, there had been many reports to the child abuse hot line reporting Elisa's abuse.¹⁰⁷ Her doctors, teachers, and neighbors all

¹⁰¹ *Child's Death*, *supra* note 1 (providing an example where a child was harmed due to the closely held nature of this information).

¹⁰² *Id.* (exemplifying how closely guarded this information is in real life scenarios).

¹⁰³ *Id.*

¹⁰⁴ *Id.* (noting the "veil of confidentiality" and how various agencies are required to keep their finding secret); *see also Opinion; Break the Cycle*, ANCHORAGE DAILY NEWS (Alaska), Sept. 19, 1997, at B6 (discussing the quieting effect of the "veil of confidentiality").

¹⁰⁵ *Id.* (discussing a child that was killed due to this secrecy).

¹⁰⁶ *See supra* notes 63-86 and accompanying text.

¹⁰⁷ *See infra* note 143 and accompanying text.

reported that they believed Elisa's mother was abusing her.¹⁰⁸ Her teacher indicated that she made two phone calls to the hot-line, but was not able to follow up on her phone calls to see how the situation was being handled because of the confidentiality requirement.¹⁰⁹ Similarly, when Elisa stopped attending school just before her death, the teachers were also unable to contact the child welfare authorities or the abuse hot-line to see what had happened to her because of the confidentiality requirements of the law.¹¹⁰ Without this "veil of confidentiality," the authorities, teachers, etc., could have prevented the death of Elisa, as well as many other children.¹¹¹

The other major detrimental effect of the pre-amended statute on the statewide central register of child abuse and maltreatment was the implication of the "expungement" requirement.¹¹² First, if a parent allegedly abuses his/her child and the abuse is reported, he or she may move to have that report expunged if there is no credible evidence proving the abuse.¹¹³ Once such a report is expunged, it is gone forever.¹¹⁴ Hence, if the abuse actually did occur, but there was not enough proof to keep the report on record, the court and child welfare authorities would have to completely discard it.¹¹⁵ Thus, the child would be unprotected from the abuse if it reoccurred because there would be no recorded evidence of prior abuse or suspicious behavior.¹¹⁶ If it was the same entity investigating the new report of alleged abuse, the agency may have its own

¹⁰⁸ *Child's Death*, *supra* note 1 (providing a shocking true life example of a child being openly abused).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Adams, *supra* note 51, at 1.

¹¹³ N.Y. SOC. SERV. LAW § 422-8(a) (McKinney 1992).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Douglas J. Besharov, *Ignoring the Danger Signs of Child Abuse; In the 16 Months Before Elisa's Death There Were at Least 10 Instances When a Teacher, a Doctor, or a Social Worker Saw Injuries*, NEWSDAY (Nassau/Suffolk), Apr. 21, 1996, at A42.

records or recollection of a previous reported suspicion.¹¹⁷ But, if a different agency was investigating the newly reported alleged abuse, it would have no way of knowing that this same parent was already suspected of child abuse in the past.¹¹⁸ This outcome could seriously impair the findings of an investigation and the determination of the proper solution for handling the allegedly abused child and parent.¹¹⁹

The second issue surrounding the "expungement" requirement regards the various child administrations' ability to circumvent blame and responsibility when something goes wrong with a child who was previously under investigation.¹²⁰ By expunging records, access to reports and investigations on allegedly abused children are completely eliminated.¹²¹ Thus, there is often no one to blame if a child returns to or remains in an abusive home despite numerous reports of abuse.¹²² It is difficult for an investigator to prevent future problems if there are no records of previous abuse on file.¹²³ By expunging the records, it is likely that an investigator will erroneously determine the future of an abused child and not request parental termination proceedings or foster care placement for the child.¹²⁴ Without any records, it cannot be clear when and what went wrong in a child's investigation so that the child may end up being abused further or even murdered, as was the case of Elisa Izquierdo.¹²⁵ Allowing these agencies to act with no public scrutiny is

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Adams, *supra* note 51, at 1. A report on the implications of New York's Social Services Law § 422, stated, "If crippled and fatally beaten children are the consequence of inflexible laws imposing secrecy on government operations, the unintended beneficiaries may be the government officials and workers who do not want their policies or performance exposed to public knowledge or government oversight." *Id.*

¹²¹ N.Y. SOC. SERV. LAW § 422-8(a) (McKinney 1992).

¹²² Besharov, *supra* note 116, at A42.

¹²³ Pyle, *supra* note 65, at B2 (discussing a new law which allows records on child abuse to be opened up and made "available to state and local caseworkers").

¹²⁴ *See id.*

¹²⁵ *Child's Death*, *supra* note 1.

unacceptable.¹²⁶ Without the threat of public scrutiny, the likelihood that decisions to leave children in abusive homes, or to forego a follow-up investigation, is quite possible.¹²⁷ Thus, on February 12, 1996, the Legislature enacted "Elisa's Law,"¹²⁸ in hopes of preventing any occurrence of further tragedies resulting from the "veil of confidentiality" and "expungement" requirements.¹²⁹

"Elisa's Law" finally allowed public officials, governmental agencies, and the like, to gain access to information about child abuse cases.¹³⁰ While the law still focuses on the privacy interests of the person against whom the report is made, it also allows our child welfare system the access it needs in order to be more effective.¹³¹ The amended statute corrects the previous defective law which required a "veil of

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ N.Y. SOC. SERV. LAW § 422(a) (McKinney 1996).

¹²⁹ *Id.* (citing legislative intent)

The legislature finds that the deaths of children due to abuse, neglect and maltreatment despite the involvement of government agencies charged with protecting these children is intolerable and unacceptable, and finds equally unacceptable laws which bar legitimate and appropriate inquiries about the activities of such agencies in these cases, for they frustrate the ability of the legislature to set informed policy and act in an appropriate oversight capacity; impair the ability of independent government agencies to determine the effectiveness of services, staff and funding; corrode public trust; and undermine the right of the public to determine whether abused children are being adequately protected.

Id.

¹³⁰ N.Y. SOC. SERV. LAW § 422-a (McKinney 1996).

¹³¹ See Pyle, *supra* note 65, at B2 (explaining why the amendment was approved overwhelmingly by the Legislature); see also N.Y. SOC. SERV. LAW § 422-a (McKinney 1996) (citing legislative intent).

The legislature finds that the privacy of children and their families in child abuse, neglect and maltreatment cases must be safeguarded, but that the interests of children, their families, and the public are best protected by increased knowledge and oversight concerning the system, and by greater accountability, and therefore declares that such privacy must be balanced with the appropriate release of information concerning such cases.

Id.

confidentiality" and the "expungement" requirement of records.¹³² The lifted veil allows state and local caseworkers, and agencies to access previously sealed, unsubstantiated abuse cases; even though these cases do not contain clear proof against the alleged abuser, or the facts surrounding the abuse.¹³³ With such access, these authorities will detect recurring abuse.¹³⁴ The "expungement" requirement of the pre-amended statute resulted in approximately eighty percent of all reported cases being discarded.¹³⁵ That so many cases of reported abuse were either false, or that there was not enough information for the authorities to substantiate the case, is highly unlikely.¹³⁶ The amended version of the law, however, discards of no cases (at least until a child has reached the minimum age of eighteen),¹³⁷ but instead authorizes "discretionary disclosure" of the pertinent information to the state and local social services.¹³⁸

"Elisa's Law" is a significant step toward the reformation of the current child welfare laws.¹³⁹ But it is only one step. The state legislature and the public cannot be complacent with the current status of the child welfare system in New York.¹⁴⁰ Parents are still abusing their children, and society cannot wait around for another Yaakov Riegler or Elisa Izquierdo to die before they become outraged and crack down on the

¹³² *Id.*; see also Pyle, *supra* note 65, at B2.

¹³³ Pyle, *supra* note 65, at B2.

¹³⁴ *Id.* Leaving "investigators in the dark" concerning the possibility of a pattern of abuse on a child. *Id.*

¹³⁵ *Id.*

¹³⁶ Darryl Campagna, *Saving the Children: An Overburdened Hot Line is the Crucial Link for Reporting Child Abuse*, TIMES UNION (Albany, N.Y.), Nov. 12, 1995, at I1 (reporting that out of 300,000 first time calls to the statewide central register hotline for abuse and maltreatment, 129,000 calls became official investigations and of that, 34,830 complaints were substantiated).

¹³⁷ N.Y. SOC. SERV. LAW § 422-a (McKinney 1996).

¹³⁸ Pyle, *supra* note 65, at B2.

¹³⁹ *Id.*

¹⁴⁰ See generally Goldstein, *Monster Mom*, *supra* note 48, at 21 (explaining that reformation of the Child Welfare Administration is only furthered when tragic cases such as Elisa Izquierdo or Yaakov Riegler are made public in the media).

Child Welfare System.¹⁴¹

IV. THE CURRENT STATE PROVISIONS FOR ABUSED CHILDREN AND SUGGESTIONS FOR POSSIBLE REVISIONS IN THE FUTURE

The New York state child welfare system has many problems.¹⁴² Although the state has established various laws addressing these abuse and neglect issues, the problems still exist.¹⁴³ These problems arise in every area of the system, "from the methods involved in reporting and investigating the child abuse to the courts and the state statutes."¹⁴⁴

A. *Statewide Central Register for Child Abuse or Maltreatment -- "The Hot-line"*

¹⁴¹ Jerry Harris, *Postmortem: After Elisa, CWA Shifts Gears Following Another Abused Child's Death*, VILLAGE VOICE (New York), Dec. 12, 1995, at 14. "This always happens, city child welfare caseworkers say. The bright lights of the media shine on a dead child's battered body, and for a short time the system kicks into high gear." *Id.* After Elisa Izquierdo's death the Child Welfare Administration cracked down significantly in their practices and procedures. *Id.* For instance, a Manhattan case worker said that at his agency, 50 to 60 more children than normal were placed into foster care in one week. Additionally, caseworkers' managers approved overtime much more frequently after Elisa's death. *Id.* This enabled the caseworkers to visit the homes where the alleged abuse was occurring in the late afternoon when it is more likely that the parent and child would both be home. *Id.* Generally this overtime is not approved due to budget constraints, and thus caseworkers usually take much longer to conduct an investigation and generate a report. *Id.* One caseworker who had worked at the Child Welfare Administration for almost ten years commented that, "[a]ll the blocks have been removed. . . . [t]his week they want you to make all your visits. If you need to go out at four, they encourage you." *Id.*

¹⁴² See Campagna, *supra* note 136, at 11 (noting problems with the investigation process from an overburdened hotline to uncooperative family that do not corroborate the complaints); see also Harris, *supra* note 141, at 14 (reporting on the ill-effects of budget cutbacks on the efforts of the city's Child Welfare Administration).

¹⁴³ See generally Pyle, *supra* note 65, at B2 (highlighting the expungement requirements that left many caseworkers in the dark regarding patterns of abuse).

¹⁴⁴ Joyce Purnick, *Elisa's Death - A Year Later, Hints of Hope*, N.Y. TIMES NEWS SERVICE, Nov. 21, 1996, available in 1996 WL-NYT 9632600205.

The first step to reporting child abuse or neglect in the state of New York is to call the State Central Register¹⁴⁵ for child abuse or maltreatment, also known as "the hot-line."¹⁴⁶ The death of Roxanne Felumero in 1969 helped to initiate the institution of the hot-line.¹⁴⁷ The community asked the recurring questions of why our system failed this young child and what could be done to avoid this in the future.¹⁴⁸ As a result, in 1973, New York established the State Central Register and the hot line.¹⁴⁹

The hot-line is a service run by the New York Department of Social Services which enables the public to dial a toll-free phone number to report suspicions of child abuse or neglect.¹⁵⁰ The operation is comprised of 147 child protective specialists, who answer the phone calls, and 208 overall staff workers.¹⁵¹

These specialists have been trained to determine whether the complaints they are receiving should be investigated.¹⁵² This is not always an easy task. They must decipher between legitimate calls and calls that may be either prank calls or calls that falsely accuse an alleged abuser.¹⁵³ They begin their inquiry by asking the caller whether "[the caller] suspect[s] that the child has been harmed physically, mentally or emotionally by the actions of a parent or person responsible for the

¹⁴⁵ Campagna, *supra* note 136, at 11.

¹⁴⁶ *See id.* (explaining that over 1,000 people utilize the statewide service each day).

¹⁴⁷ *Id.* Roxanne Felumero was a 3-year-old girl who was abused by her step-father. *Id.* In 1969, she was removed from her home, but later returned only to be beaten to death. *Id.*

¹⁴⁸ Goldstein, *Monster Mom*, *supra* note 48, at 21.

¹⁴⁹ Campagna, *supra* note 136, at 11.

¹⁵⁰ *Id.* "Sometimes the person calling the hot line is the frightened neighbor or relative of a troubled family . . . [s]ometimes, the caller is party to a bitter divorce . . . [o]r a bystander" *Id.*

¹⁵¹ *Id.* Reporting that the Register was created through state law and has been a role model for other states' programs. *Id.*

¹⁵² *Id.* (stating that "if they decide that [a complaint should be investigated] they set off an irreversible process.").

¹⁵³ Campagna, *supra* note 136, at 11. In 1994, 85,000 out of 486,000 received calls were determined to be prank phone calls. *Id.*

person's care.¹⁵⁴ Once those questions, as well as others, are asked and answered, the specialist will decide whether or not to order an investigation on the complaint.¹⁵⁵ Hot-line administrators claim that their decision is based on the priority of the child's welfare, however, they must also balance such a decision with the parents' fundamental and privacy rights to rear their children, and sometimes the line drawing can be difficult.¹⁵⁶ After the administrators order an investigation, it becomes irreversible.¹⁵⁷ The process is as follows: "County staff must acknowledge a hot line report within twenty minutes, and must assess the child's welfare [in one day]."¹⁵⁸ The caseworkers are then sent out to investigate the reported abuse.¹⁵⁹ The caseworkers must substantiate or reject the report within sixty days of its being made.¹⁶⁰

The hot-line is undoubtedly a productive, working system to report child abuse and maltreatment,¹⁶¹ however, because of the overwhelming amount of calls the service receives on a daily basis, as well as the lack of funds allotted to the registration, it does not function as effectively as

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See generally Campagna, *supra* note 136, at 11.

¹⁵⁷ *Id.* (stating that this process "becomes a major intrusion into a family's life").

¹⁵⁸ Campagna, *supra* note 136, at 11.

¹⁵⁹ See generally David Van Biema, *Abandoned to Her Fate; Neighbors, Teachers and the Authorities All Knew Elisa Izquierdo Was Being Abused But Somehow Nobody Managed to Stop It*, TIME, Dec. 11, 1995, at 32 (discussing Elisa Izquierdo's case, Executive Director of the Citizens' Committee for Children states how "case loads are rising [and that] [i]nvestigations take longer").

¹⁶⁰ Campagna, *supra* note 136, at 11. In 1994, the hot-line received 486,000 phone calls. *Id.* Of those calls, over 300,000 were first time complaints about an individual's abuse or maltreatment of a child. *Id.* There were 129,000 reports made from those first-time complaints, all of which were then investigated. *Id.* Only 34,830 out of the 129,000 investigated reports were substantiated by the caseworkers. *Id.*

¹⁶¹ *Id.* (stating that "New York's State Central Register" which was "[c]reated by law in 1973 . . . [b]eginning as a makeshift operation with five workers, . . . is now a far-reaching system that employs 208 people.").

possible.¹⁶² A new computerized telephone system was installed because when reports of child abuse are made to the hot-line only, the registration process is just not enough.¹⁶³ Ten to fifteen percent of the callers per day end up hanging up when their call is not answered after a minute of waiting on the telephone.¹⁶⁴ This statistic is unsettling, because it is not known whether these people call back.¹⁶⁵ If they do not, then it is feasible that the children on whose behalf they were calling, do not get reported as suspected victims of abuse. Problems also arise when the phone lines get so backed up that over eighty percent of the calls are not attended to in the first minute of the placed phone call.¹⁶⁶ Clearly, there is a shortage of staff and phone lines to accommodate the amount of calls that the service receives on any given day.¹⁶⁷

There are also problems with the hot-line because it must comply with state law,¹⁶⁸ which often leads to the conclusion that a complaint may not be taken, even if it is against the discretion of the child protective specialist.¹⁶⁹ The New York Family Court Act mandates that authorities may only remove a child from a parent who is abusing drugs or alcohol, if that drug abuse is impairing the parent's actions so severely that he or she is not providing a minimum degree of care for the child.¹⁷⁰ An additional provision states that this does not apply to a parent who is

¹⁶² *Id.* Delays for answering a telephone call are sometimes up to 45 minutes, however, the agency claims that that is a rare occurrence because 80 percent of the phone calls are answered within the first minute of the telephone call. *Id.*

¹⁶³ *Id.*; see generally Barbara Kantrowitz et al., *How to Protect Abused Children*, NEWSWEEK, Nov. 23, 1987 (stating that due to the deaths of a child in 1987, it was exposed that "caseworkers in New York and other cities say that they are overwhelmed . . .").

¹⁶⁴ Campagna, *supra* note 136, at 11.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* The hotline employs 208 people who handle a staggering number of calls. *Id.*

¹⁶⁸ See generally *id.* (noting that the hotline was created by a 1973 law).

¹⁶⁹ Campagna, *supra* note 136, at 11.

¹⁷⁰ N.Y. FAM. CT. ACT § 1046(iii) (McKinney 1983); see also *supra* note 45 and accompanying text.

voluntarily in current therapy for his or her drug or alcohol addiction.¹⁷¹ Therefore, even if parents are abusing drugs in front of their children, so long as they do not lose self-control, the child protective specialists are not authorized to warrant a report and investigation against that parent.¹⁷²

The Family Court Act also mandates that a child's previous statements relating to any allegations of abuse he has incurred, is not sufficient to convict the alleged abuser if the child does not have corroboration for such statements.¹⁷³ This law parallels the hot-line guidelines.¹⁷⁴ For instance, the hot-line rejected a complaint made where a five-year-old child identified a person who allegedly sexually abused her.¹⁷⁵ The hot-line said this underage identification was unacceptable unless there was outside verification to the identification.¹⁷⁶ These problems, however, seem directly related to the Family Court Act's provisions, and not the hot-line itself.

Because the hot-line is the only central registry for reports of child abuse, it must have the facilities to field all of the incoming calls.¹⁷⁷ Calls to the hot-line are up twenty-two percent, but the budget cutbacks in 1995-96 have made it so the registry has had to terminate some of its contracts with state caseworkers and nonprofit agencies designed to protect the children.¹⁷⁸ The result is that there are fewer people going out to investigate the reports ordered by the child protective specialists.¹⁷⁹

¹⁷¹ *Id.*

¹⁷² Campagna, *supra* note 136, at 11. An example of a case the police reported to the hot-line which was turned down for investigation involved a mom smoking crack with her baby in her arms and the rest of her children, who were old enough to understand what the mom was doing, were crowded around watching her get stoned. *Id.* The police say this scenario comes up often, yet there are no means by which an authority can bring an abuse or neglect proceeding against the parent. *Id.*

¹⁷³ N.Y. FAM. CT. ACT § 1046(vi) (McKinney 1983).

¹⁷⁴ Campagna, *supra* note 136, at 11.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Lawrence C. Levy, *Pataki Saves His Unkindest Cuts for Kids*, NEWSDAY (Nassau/Suffolk), June 19, 1996, at A41.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

Additionally, the recent up-grade of the hot-line's computerized phone system is not sufficient for obtaining all of the necessary information that a child protective specialist would need for deciding whether or not to accept a report.¹⁸⁰ The current phone system provides information to the workers on how large the back-up is at any given time.¹⁸¹ It also provides information on how many incoming calls the registration is receiving, how many hang-ups there have been, and in what time frame they occurred.¹⁸² While this information is pertinent for the determination of how many additional staff workers are needed, it does not provide any records on the child who is being reported.¹⁸³ An optimal system would include a computer service accessible during a phone call, which would reveal whether the child being reported had any past confirmed record of abuse or maltreatment.¹⁸⁴ If there is a past record, the child protective specialist might be more apt to accept a report that they would otherwise reject in light of the circumstances.¹⁸⁵ For example, a teacher of Elisa Izquierdo's reported an injury discovered on Elisa's hand to the hot-line.¹⁸⁶ The hot-line rejected the report because the teacher could not connect Elisa's injury to her mother's conduct.¹⁸⁷ If, however, the specialist had accessed a report during the call confirming past abuses to Elisa connectable to her mother, the hot-line might have accepted the report and thus ordered an investigation on the matter.¹⁸⁸ This upgraded phone system, however, is unlikely to take effect any time soon because of the fiscal crisis that the state of New York and its child welfare system are undergoing.¹⁸⁹

¹⁸⁰ Besharov, *supra* note 116, at A42.

¹⁸¹ *Id.*

¹⁸² Campagna, *supra* note 136, at 11.

¹⁸³ *Id.*

¹⁸⁴ Besharov, *supra* note 116, at A42.

¹⁸⁵ *Id.* See also Van Biema, *supra* note 159, at 32 (detailing Elisa Izquierdo's case).

¹⁸⁶ Besharov, *supra* note 116, at A42.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Levy, *supra* note 177, at A41.

After Elisa Izquierdo's death, Governor Pataki granted eighty million dollars to child protection, foster care and abuse prevention for the 1996-97 budget.¹⁹⁰ While this may seem as if the child agencies will be getting substantial money to improve the system in its current state, in fact, the system is struggling to get back to ground zero after the 1995 budget cut of 200 million.¹⁹¹ While three children per week are dying due to child abuse and approximately 2000 child related officials lost their jobs due to the budget constraints in 1995-96, eighty million dollars is not nearly enough to resurrect the child welfare system to its status in 1994.¹⁹² Moreover, society and the legislature's goal should be even greater than it once was. At the very least, there should be enough money allotted to the registry so that it can handle the incoming calls it receives.¹⁹³ If people are unable to get through the preliminary step of reporting the alleged abuse, it will be virtually impossible to lessen the horrific statistics of abuse related deaths.¹⁹⁴

Thus, the first step to improving the existing hot-line would have to come from legislative grants for the child welfare system. This would enable the training and hiring of additional child protective specialists to

¹⁹⁰ *Id.* (suggesting Governor Pataki granted 80 million dollars to child welfare services to relieve some of the pressure he was receiving from the media after the death of Elisa Izquierdo).

¹⁹¹ *Id.* (discussing the fact that although the budget was dramatically cut, local governments are still required to provide the same services provided before the budget cut, as a result, sales tax revenues and local property taxes have been used to help agencies continue to provide the same level of services).

¹⁹² *Id.* In this Viewpoints article, the author contends that unless Pataki adds an additional 120 million to the already allotted 80 million, the child welfare system will not be where it was in 1994, and as a result will suffer tremendously. *Id.*

¹⁹³ *Id.* The author explains that in the long run the extra 4,000 dollars it would take to spend on a troubled child would certainly outweigh the 50,000 dollars it would take to put that same child in a drug rehabilitative center or to house the child in prison, which could result if these children are not cared for properly now. *Id.*

¹⁹⁴ See Besharov, *supra* note 116, at A42 (noting that a child protection committee of a hospital that Elisa Izquierdo was treated at decided not to report the burns they discovered on Elisa's foot and leg). "[T]oo many professionals are not adept at spotting signs of serious physical, sexual and emotional abuse. They generally don't know what to report -- and how to report it." *Id.*

handle the heavy rate of the incoming calls at the statewide registry for child abuse and maltreatment.¹⁹⁵ The second step would be to amend the statute which allows parents to abuse drugs and alcohol in front of their children without being punished for this behavior,¹⁹⁶ as well as the statute which requires corroboration of a child's statements about his alleged perpetrator.¹⁹⁷ Alternatively, the hot-line child protective specialists should not have to comply with the law.¹⁹⁸ The specialists' non-compliance would allow them to order a report which would, in turn, require an investigation into the alleged abuse.¹⁹⁹

B. The Caseworkers

Like the Hot-line, the child welfare agencies and caseworkers face many problems that must be reconciled in order for the child welfare system to function properly.²⁰⁰ To begin with, there are not enough

¹⁹⁵ See Campagna, *supra* note 136, at 11 (stating that "[i]n 1994 alone, the hot-line received 486,000 calls."). Terrance McGrath, a spokesman for state social services noted that "10 percent of the calls hang up before they get through." *Id.* However, at least eighty percent of the calls are answered within a minute. *Id.* Kristen Hoagland, Executive Director of the Saratoga Center for Family, stated that her staff "has had recurring problems with the hotline . . . they still sometimes wait nearly an hour to get through." *Id.*

¹⁹⁶ See *id.* (indicating that the state cannot intervene when a parent is abusing drugs in the presence of their children because state law provides that "even substance abuse to the point of losing self-control won't constitute neglect without evidence that 'the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired.'").

¹⁹⁷ See *id.* (discussing the fact that child protective specialists will not take a complaint of abuse from a child, the victim, because they feel a child is "too young to give a reliable account").

¹⁹⁸ See generally *id.* (inferring that in order for specialists to improve child welfare, reports of abuse by children should be investigated).

¹⁹⁹ See generally *id.*

²⁰⁰ See Harris, *supra* note 25, at 14. In 1995, "[a] mayoral management report . . . estimated that CWA was [twenty] per cent understaffed." *Id.* Caseworkers are "[f]aced with crushing workloads, low pay, poor training, and a task that would be depressing even under the best of conditions . . ." *Id.* Prior complaints about the CWA indicate: "caseworkers failed to keep City attorneys abreast of cases being litigated and that some even sought to help opposing attorneys win judgments against CWA; foreign-born caseworkers whose values

caseworkers to handle the overwhelming caseload that the administration faces on a day-to-day basis.²⁰¹ Additionally, the employed caseworkers often are not trained appropriately, leading to frequently mishandled cases.²⁰² For example, a study conducted in 1986 revealed that approximately fifty-six percent of the allegedly abused or neglected children who were investigated went unreported.²⁰³ Another statistic reveals that in 1993, the caseworkers deemed seventy-five percent of the reports that were investigated after a call was made to the hot-line unfounded.²⁰⁴ This finding leads to a case being closed after the initial investigation.²⁰⁵ This high percentage reveals that either many people are making false reports, or more probably, the caseworkers' conclusions are incorrect.²⁰⁶ Such conclusions, regardless of a caseworker's intent, puts

conflict with agency policy, sometimes find 'excessive corporal punishment' an acceptable form of discipline; cases that go unmonitored when the caseworkers are on vacation; or the practice of 'washing one's hands' of a case by transferring it to another unit, and not monitoring or working on the case while it's being reassigned." *Id.*

²⁰¹ See *id.* This article explains the difficulty of getting overtime approval by the managers to enable caseworkers to visit the homes of abused children. *Id.* By state law, caseworkers must make phone contact within 24 hours of a reported abuse, and must visit the home within 48 hours of the report. *Id.* This is often impossible with the amount of cases and investigations that the caseworkers are required to conduct. *Id.* Additionally, without the approval of overtime, it often takes up to 2 weeks to conduct a mandatory home visit, which should have been conducted in only 2 days. *Id.*

²⁰² Besharov, *supra* note 116, at A42. (noting that the current one to two hour training programs are inadequate, and that future programs need to teach professionals how to detect and report emotional and behavioral problems).

²⁰³ *Id.* This statistic shows that approximately 500,000 children, 2,000 sustaining injuries so severe as to require hospitalization, went unreported after being investigated. *Id.*

²⁰⁴ *Id.* (suggesting agencies do not have enough resources or time to waste on investigating reports which they later find to be wrong or inappropriate).

²⁰⁵ *Id.*

²⁰⁶ *Id.* It is not a rare occasion when a caseworker makes a mistake. *Id.* When investigating, a caseworker may not discover enough evidence to prove abuse or maltreatment. *Id.* Because of the shortage of caseworkers and the time one may invest into a single investigation, the caseworker often cannot dig deeply enough to uncover the abuse or maltreatment. *Id.* Such circumstances often lead to incorrect findings showing unsubstantiated abuse. *Id.*

²⁰⁶ See Besharov, *supra* note 116, at A42.

a child's safety into serious jeopardy. Ironically, a study conducted between 1989 and 1993, exhibits that as reports to the "child welfare agency increased by more than thirty percent, the percentage of substantiated reports fell by about forty-seven percent."²⁰⁷ All of these statistics indicate that the caseworkers need better training programs, which would enable them to detect child abuse and maltreatment more accurately.²⁰⁸

In addition to the inaccurate reporting which damages the child welfare system, there is also an extremely high turnover rate for caseworkers.²⁰⁹ The low pay²¹⁰ coupled with the high pressure of handling such an overwhelming caseload contributes significantly to caseworkers short-term careers.²¹¹ This turnover also contributes to the many problems of the child welfare system. For instance, it may take a case up to six months to get transferred from the caseworker who is leaving, to another caseworker.²¹² Even worse, the case could end up being overlooked all together in the shuffle.²¹³ Either way, the consequences of the constant shift in staff members could feasibly put an abused child in serious jeopardy.²¹⁴ Another problem arises with the constant need to train the

²⁰⁷ *Id.*

²⁰⁸ *Id.* (indicating that signs of child abuse go unrecognized by caseworkers because they are not familiar with all the emotional problems associated with mistreatment).

²⁰⁹ See Joyce Purnick, *Elisa's Death: A Year Later, Hints of Hope*, N.Y. TIMES, Nov. 21, 1996, at B1 (noting that due to both the low pay and their high caseload there is a 49 percent turnover rate for caseworkers).

²¹⁰ *Id.* A caseworker's salary begins at \$26,000 per year. *Id.* This salary is not increased unless the caseworker becomes a supervisor, or has been with the agency for ten years. *Id.*

²¹¹ See Harris, *supra* note 25, at 14. Statistics indicate that from 1993 to 1995 the Child Welfare Administration suffered a net loss of 100 caseworkers. *Id.* In addition, "400 senior workers took buyouts and early-retirement offers." *Id.* The junior workers often do not last more than a couple of years. *Id.*

²¹² See Purnick, *supra* note 209, at B1 (indicating that when caseworkers leave, "[t]heir cases [have] to be reassigned, and the whole system [goes] out of control.").

²¹³ See Harris, *supra* note 25, at 14. A confidential Human Resources Administration memo questioned why it takes the CWA six months to transfer a case. *Id.*

²¹⁴ See generally Besharov, *supra* note 116, at A42 (indicating that "children in real danger - like Elisa - get lost in the day-to-day pressures of large caseloads.").

incoming caseworkers appropriately.²¹⁵ A limited budget makes it difficult to have appropriate training programs on an ongoing basis.²¹⁶

Recently, however, the City has finally allotted funds to the Child Welfare Administration.²¹⁷ The Commissioner of the Administration of Children's Services, Nicholas Scopetta, has begun to utilize this funding toward much needed improvements.²¹⁸ The first allocation of funds has gone toward hiring 200 more caseworkers for the agency.²¹⁹ With these extra caseworkers, the agencies should be able to handle their overwhelming caseload more sufficiently. More importantly, however, the Commissioner has instituted more rigorous training programs for these employed caseworkers.²²⁰ After all, it does not matter how many staff members the agencies have if they are not handling the cases they receive properly. The Commissioner is also allotting a larger salary for beginning caseworkers,²²¹ but at the same time, he is requiring that a potential caseworker be more qualified in order to work at the agency.²²² One must

²¹⁵ See generally Harris, *supra* note 25, at 14 (noting that a case is not monitored or worked on while it is being transferred or reassigned, which may take six months).

²¹⁶ See generally *id.* (indicating that poor training is one of the main reasons junior caseworkers leave their jobs).

²¹⁷ See Purnick, *supra* note 209, at B1. New York's Mayor, Rudolph Giuliani, originally cut the Child Welfare Agency budget early on in his tenure. *Id.* In the wake of the death of Elisa Izquierdo, the Mayor has provided the agency with new funds to improve the system. *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* The new training programs consist of 25 days of initial training at the Child Protective Services Academy in Queens, New York, as opposed to the original 20 days they received. *Id.* There is a new requirement that the caseworkers must have hands-on training before they are permitted to go to the homes to investigate the reported alleged abuse of a child. *Id.* They are placed in training units and gradually receive more and more cases. *Id.* After six months they have another 19 days of training, and then finally they may take on the full responsibility of a caseworker. *Id.* In addition, caseworkers who have been at the agency for some time are being required to take a refresher course on how to judge a child's risk of harm. *Id.*

²²¹ Purnick, *supra* note 209, at B1 (stating that part of the reason for the "49 percent a year" turnover is the starting salary of \$26,000 a year).

²²² See *infra* note 223 and accompanying text.

pass an English proficiency test, as well as possess a degree in social work.²²³ While these new criteria are important for reformation, alone they are not enough.²²⁴ What the agency has to focus on is the actual content and quality of the training programs, rather than the quantity of hours spent on training.²²⁵

The underlying problem with the caseworkers inaccurate reports lies in their difficulty of assessing the circumstantial evidence which surrounds a child's abuse.²²⁶ The new training programs must address this problem directly. It is imperative that these caseworkers be able to spot physical, sexual, and emotional abuse.²²⁷ Therefore, the training must also focus heavily on the behavior of a child which would indicate a possible reaction to abuse or neglect, such as, abnormal, extreme[,] [or] age-inappropriate behavior.²²⁸ It is not enough to only be able to pick out signs of physical and sexual abuse.²²⁹ These atypical behaviors of a child can often clearly lead to proof of abuse or neglect if a caseworker is thorough

²²³ *Id.* (stating that both oral and written tests must be passed to demonstrate English proficiency).

²²⁴ Besharov, *supra* note 116, at A42 (noting that "efforts to train professionals . . . have often been superficial . . . and short-lived.").

²²⁵ *Id.*

²²⁶ *Id.* For instance, many different reports were generated on Elisa Izquierdo, however, often these reports did not mandate social intervention, because the caseworkers did not realize the severity of the situations observed. *Id.* For example, one report found that Elisa would urinate and defecate around her apartment. *Id.* She would spread her feces on the refrigerator and drink water from the toilet. *Id.* Another report generated indicated that Awilda Lopez, Elisa's mother, was into voodoo and witchcraft and constantly said that Elisa was possessed by the devil. *Id.* These warning signs, in light of Elisa's past abuse, should have prompted the caseworkers to remove Elisa from her home, however, the signs were overlooked because the caseworkers were not aware of their importance. *Id.*

²²⁷ *Id.* Caseworkers must be especially adept at recognizing the signs of a drug addicted parent because so many of the current cases involve drug addiction of some kind. *Id.* This sort of recognition is difficult for the caseworkers, because often a parent on crack appears to be a normal and loving at one moment, but when high on crack or another drug that same parent may turn into a violent lunatic. *Id.*

²²⁸ Besharov, *supra* note 116, at A42 (noting that Elisa Izquierdo's behaviors were "red flags signaling the need for societal intervention").

²²⁹ *Id.*

in his investigation.²³⁰ With the agency hiring 200 more caseworkers, investigative thoroughness should be more attainable.²³¹ The implementation of the above steps should make a difference in the future; however, the key is to keep the public interested in the child welfare system.²³² With public interest, comes state and political interest, which in turn, keeps the government funding new programs for reformations of the Child Welfare Agency.²³³

C. Case Back-up in the Family Courts

As state hot-line for abuse and maltreatment receives an increase in phone calls, and the caseworkers receive more reports leading to investigations, so too has the family court system seen an increase in its docket.²³⁴ This increase, while positive because there are more abuses being reported, may actually have extreme negative implications on the best interests of a child.²³⁵ With the volume of cases a family court

²³⁰ *Id.*

²³¹ Purnick, *supra* note 209, at B1 (the additional money for more caseworkers is a change for Mayor Giuliani who had earlier "cut funds from the city's child welfare agency").

²³² Levy, *supra* note 177, at A41. It is proven that often when a child gets tragically abused to death, the public is extremely outraged and lobbies for all different sorts of reforms, however, as soon as the uproar dies down, the child welfare systems return to the same state they were in before the child was murdered. *Id.* It is also proven that during these public outcries the state funding for the child welfare system increases, but again, when the outcry subsides, the very same funding gets cut in the next year's budget. *Id.*

²³³ *Id.*

²³⁴ Angelo T. Cometa, *Bar President Concerned About Crisis in Courts*, N.Y.L.J., Jan. 23, 1991, at 49. Between 1986 and 1991, the New York City Family Courts saw an increase of child protection cases of 147 percent. *Id.*; see also Karen Freifeld, *Fewer Cracks: Family Court Moves to Safeguard At-risk Children*, NEWSDAY (Queens), Apr. 16, 1996, at A06. Since the death of Elisa Izquierdo, the court has also felt an increased caseload due to the reforms in the hot-line, caseworker diligence, and public awareness. *Id.* The court has experienced a 22 percent increase of cases since Elisa's death. *Id.*

²³⁵ Interview, *supra* note 30. Judge Cohen explained many possible different scenarios where the effects of a long trial period could have negative results on a child. *Id.* For instance, Judge Cohen addressed the problem of the debate between current parental fitness verses the best interest of the child. *Id.* Where a judge must award custody to the natural parent if they are currently fit regardless of past maltreatment, a child could very feasibly be given back

encounters, litigation regarding child custody issues could last up to five years.²³⁶ This extended period of litigation is detrimental to the child's development because it is possible the child will be bounced back and forth between his natural parents and his foster or potential adoptive parents.²³⁷ For example, if a judge determines at a fact-finding hearing that a child is in danger, than that child will be removed from his home and placed in the state's care.²³⁸ This would obviously cause major upheaval in any child's life.²³⁹ But then, if a custody trial proceeded for up to five years, a child may possibly become attached to his foster or potential adoptive parent, which could result in even greater emotional unrest for the child if the court decided that he should return to the natural parent.²⁴⁰ The longer the trial takes, the more settled a child may become, which can have extreme negative consequences for the child's development.²⁴¹ The court claims to have increased its hours of operation to comply with the increased volume of cases; however, the court has not increased its hours so drastically as to keep up with the overwhelming amount of cases it receives on a daily basis.²⁴² Thus, the problem of extended litigation and court back-up remains an issue.

A possible solution to this problem may be to utilize the increasingly popular, alternative dispute resolution, as an option.²⁴³ Not only would this take some pressure off the courts, but it may provide a

to a parent. *Id.* Judge Cohen finds this problematic because if a trial takes five years, virtually anyone can get it together in that time frame. *Id.* The question then becomes whether we really want to let a child become attached to another caregiver who has always nurtured and been good to the child, only to take him away to be returned to the natural parent who used to abuse or neglect the child. *Id.* This debate poses major problems for the family court judge. *Id.*

²³⁶ Interview, *supra* note 30.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Interview, *supra* note 30.

²⁴² Freifeld, *supra* note 234, at A06 (stating that they are beginning to "change[] court procedures and increas[ing] hours of operation").

²⁴³ *Id.*

more amicable setting for the two parties fighting for custody of the child.²⁴⁴ This could be ideal for the child himself because, if in the long run, one party gets the child, but the other party retains visitation rights, it would end up being easier for the child if both parties were not adversaries.²⁴⁵ The courtroom creates a more adversarial surrounding than alternative dispute resolution, which encourages both parties to work out their differences with a mediator.²⁴⁶

V. CONCLUSION

The strict evidentiary standards that the Supreme Court has implemented as a requirement for terminating parental rights, along with New York's "diligent efforts" requirement, make it difficult to take children away from their natural parents.²⁴⁷ Additionally, while the present available state services and statutes governing the removal of abused children from their homes are beginning to focus more on children's best interest than they did in the past, they are still in need of improvement.²⁴⁸ Hopefully, by implementing a more extensive hot-line service, continuing funding to the various children's agencies, and encouraging and facilitating communication among those agencies for the protection of abused children, we will not see the same tragedies as we have in the past.

²⁴⁴ Mary Leonard, *Quieting Conflict: America is Turning Away from Confrontation and Opening the Door to Mediation*, BOSTON GLOBE, Feb. 16, 1997, at D1.

²⁴⁵ *Id.* (discussing the scenario where "alternative dispute resolution works best [is] when those at odds are in a continuing relationship . . .").

²⁴⁶ *Id.*

²⁴⁷ Gary Spencer, *New Laws on Children Proposed; Vacco Urges Changes In Removal Criteria*, N.Y.L.J., Mar. 20, 1996, at 1 (quoting a report by the Governor's Commission on Child Abuse and Neglect, headed by New York State Attorney General Dennis Vacco, which states that the "diligent efforts" requirements is entitled to "encourage and strengthen the parental relationship" before parental rights can be terminated for abuse or neglect.").

²⁴⁸ *See id.* (noting that the commission suggested amendments to the current statutes, such as one that would "provide that it is not in the best interests of a child who has been repeatedly, severely or sexually abused 'to reunite that child with the respondent parent.'").

Children are the most vulnerable members of our society and, thus, need protection from the inflicted abuse they suffer at the hands of their parents or primary caregivers. The issue of child protection must always be a central concern of society. We cannot let our tolerance for such abuse become sedentary after the outrage of a tragic child death subsides. The public must continue to speak out and advocate children's best interests. The legislature must continue to allocate funds to the state agencies so services are continually upgraded and reformed. The Administration for Children's Services must continue to educate its caseworkers. Only then will the true best interests of our children be served.

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